

Notice of Proposed Rulemaking

Health Insurance Portability for Group Health Plans

REG-253578-96

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In T.D. 8716, page 5, the IRS is issuing temporary regulations relating to group health plan portability, access, and renewability requirements added to the Internal Revenue Code by section 401 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The IRS is issuing the temporary regulations at the same time that the Pension and Welfare Benefits Administration of the U.S. Department of Labor and the Health Care Financing Administration of the U.S. Department of Health and Human Services are issuing substantially similar interim final regulations relating to the group health plan portability, access, and renewability requirements added by HIPAA to the Employee Retirement Income Security Act of 1974 and the Public Health Service Act. The temporary regulations provide guidance to employers and group health plans relating to the obligation of plans to comply with new requirements relating to preexisting condition exclusions, discrimination based on health status, access to coverage, and other requirements. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by July 8, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-253578-96), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered to: CC:DOM:CORP:R (REG-253578-96), room 5226, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, RUSS WEINHEIMER, (202) 622-4695; concerning submissions or to request a hearing, CHRISTINA D. VASQUEZ, 202-622-7180. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information referenced in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The collection of information is in §§ 54.9801-3T, 54.9801-4T, 54.9801-5T, 54.9801-6T, and 54.9806-1T (see the temporary regulations published in T.D. 8716). This information is required by the statute so that participants will be informed about their rights under HIPAA and about the amount of creditable coverage that they have accrued under a group health plan. The likely respondents are business or other for-profit institutions, nonprofit institutions, small businesses or organizations, and Taft-Hartley trusts. Responses to this collection of information are mandatory.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by June 8, 1997. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the

Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see the preamble to T.D. 8716);

How to enhance the quality, utility, and clarity of the information to be collected;

How to minimize the burden of complying with the proposed collection of information, including the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Background

T.D. 8716 adds §§ 54.9801-1T through 54.9801-6T, 54.9802-1T, 54.9804-1T, and 54.9806-1T to the Miscellaneous Excise Tax Regulations. These regulations are being published as part of a joint rulemaking with the Department of Labor and the Department of Health and Human Services (the joint rulemaking).

The text of T.D. 8716 also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

Pursuant to sections 603(a) and 605(b) of the Regulatory Flexibility Act, it is hereby certified that the collection of information referenced in this notice of proposed rulemaking (see §§ 54.9801-3T, 54.9801-4T, 54.9801-5T, 54.9801-6T and 54.9806-1T of T.D. 8716) will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small entities will be subject to the collection of information requirements in these regulations, the requirements will not have a significant economic impact on these entities. The average time required to complete a certification required under these regulations is estimated to be 5 to 12 minutes for all employers. This average is based on the assumption that most employers will automate the certification process. The paperwork requirements other than certifications that are contained in the regulations are estimated to impose less

than 10% of the burden imposed by the certifications. Many small employers that maintain group health plans have their plans administered by an insurance company or third party administrators (TPAs). Most insurers and TPAs are expected to automate the certification process and therefore their average time to produce a certificate should be similar to the 5 to 12 minute average estimated for all employers. However, even for small employers that do not automate the certification process, the collection of information requirements in the regulation will not have a significant impact. Even if it is conservatively assumed that their average time to produce a certificate is 3 times as long as the highest estimate for all employers (i.e., 36 minutes per certificate) and that all of their employees are covered by their group health plan and that half of the employees receive a certificate each year, and this figure is then increased by 10% to account for the paperwork burdens apart from the certifications, the average burden per employee is only 20 minutes per year. Thus, for example, for an employer with 10 employees, the annual burden would be 3 hours and 20 minutes per year. At an estimated cost of \$11 per hour, this would result in a cost of less than \$37 per year for the employer, which is not a significant economic impact.

This regulation is not subject to the Unfunded Mandates Reform Act of 1995 because the regulation is an interpretive regulation. For further information and for analyses relating to the joint rulemaking, see the preamble to the joint rulemaking. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8)

copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Russ Weinheimer, Office of the Chief Counsel, Employee Benefits and Exempt Organizations. However, other personnel from the IRS and Treasury Department participated in their development. The proposed regulations, as well as the temporary regulations, have been developed in coordination with personnel from the U.S. Department of Labor and U.S. Department of Health and Human Services.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 54 is proposed to be amended as follows:

PART 54—PENSION EXCISE TAXES

Paragraph 1. The authority citation for part 54 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 54.9801-1 is also issued under 26 U.S.C. 9806.

Section 54.9801-2 is also issued under 26 U.S.C. 9806.

Section 54.9801-3 is also issued under 26 U.S.C. 9806.

Section 54.9801-4 is also issued under 26 U.S.C. 9806.

Section 54.9801-5 is also issued under 26 U.S.C. 9801(c)(4), 9801(e)(3), and 9806.

Section 54.9801-6 is also issued under 26 U.S.C. 9806.

Section 54.9802-1 is also issued under 26 U.S.C. 9806.

Section 54.9804-1 is also issued under 26 U.S.C. 9806.

Section 54.9806-1 is also issued under 26 U.S.C. 9806. * * *

Par. 2. Sections 54.9801-1, 54.9801-2, 54.9801-3, 54.9801-4, 54.9801-5, 54.9801-6, 54.9802-1, 54.9804-1, and 54.9806-1 are added to read as follows:

[The text of these proposed sections is the same as the text of §§ 54.9801-1T, 54.9801-2T, 54.9801-3T, 54.9801-4T, 54.9801-5T, 54.9801-6T, 54.9802-1T, 54.9804-1T, and 54.9806-1T published in T.D. 8716.]

Margaret Milner Richardson,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on April 1, 1997, 12:48 p.m., and published in the issue of the Federal Register for April 8, 1997, 62 FR. 16977)